

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSE A. SANCHEZ,) Case No. 5:15-cv-01486-PSG
Plaintiff,)
v.) **REPORT AND RECOMMENDATION
REMANDING SUA SPONTE AND
DENYING MOTION TO PROCEED
IN FORMA PAUPERIS**
DONNA VIERUA, et al.,)
Defendants.)

Plaintiff Jose A. Sanchez initiated this unlawful detainer action in state court.¹ Defendant Donna Vierua subsequently removed the case to federal court² and at the same time filed a motion to proceed in forma pauperis.³ Sanchez then declined magistrate judge jurisdiction,⁴ so this matter will be reassigned to a district judge. The court recommends the case be remanded for lack of

¹ See Docket No. 1.

² See *id.*

³ See Docket No. 2.

⁴ See 28 U.S.C. § 636(c) and Fed. R. Civ. P. 72(a); see also Docket No. 4.

1 subject matter jurisdiction⁵ and Vierua's motion to proceed in forma pauperis be denied as
 2 frivolous.⁶

3 When presented with an application to proceed in forma pauperis, a court must first
 4 determine if the applicant satisfies the economic eligibility requirement of 28 U.S.C. §
 5 1915(a).⁷ Section 1915(a) does not require an applicant to demonstrate absolute destitution.⁸ An
 6 IFP application will be denied and the action dismissed, however, if the party seeking IFP status
 7 has filed a pleading or petition that is legally frivolous.⁹ A submission is "frivolous" for IFP
 8 purposes and therefore subject to summary dismissal under § 1915(e)(2)(B)(i) "where it lacks an
 9 arguable basis either in law or in fact."¹⁰

10 In her notice of removal pursuant to 28 U.S.C. § 1446, Vierua asserts that there is federal
 11 question jurisdiction over the case based on the Protecting Tenants at Foreclosure Act 2009.¹¹ Her
 12 position lacks merit. Federal question jurisdiction depends on the contents of the plaintiff's well-
 13 pleaded complaint and may not be predicated on the defendant's counterclaims or
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 18 ⁵ Cf. *Louden, LLC v. Pajarillo*, Case No. 12-cv-2638-EMC, 2012 WL 3155151, at *1 (N.D. Cal.
 19 Aug. 2, 2012); *3925 Alameda Prop. LLC v. Brainerd*, Case No. 12-cv-4924-EMC, 2012 WL
 20 5199170, at *2 (N.D. Cal. Oct. 22, 2012); *Compass Bank v. Goble*, Case No. 12-cv-1885-WQH,
 21 2012 WL 3229155, at *2 (S.D. Cal. Aug. 3, 2012); *Bank of Am., Nat. Ass'n v. Soliven*, Case No.
 22 10-cv-1844-IEG, 2010 WL 3636260, at *2 (S.D. Cal. Sept. 14, 2010).

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 24 ⁶ Cf. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hoke v. Arpaio*, 92 F.3d 1192, 1192 (9th Cir.
 25 1996).

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 27 ⁷ See *Franklin v. Murphy*, 745 F.2d 1221, 1226 n.5 (9th Cir.1984).

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 29 ⁸ See *McCone v. Holiday Inn Convention Ctr.*, 797 F.2d 853, 854 (10th Cir.1982) (citing *Adkins v.
 30 E.I. Du Pont de Nemours & Co., Inc.*, 335 U.S. 331, 339 (1948)).

⁹ See 28 U.S.C. § 1915(e)(2)(B)(i).

¹⁰ *Neitzke*, 490 U.S. at 325; *Hoke*, 92 F.3d at 1192.

¹¹ See Docket No. 1 at 2; see also 12 U.S.C. § 5220.

1 defenses.¹² Here, while Sanchez's complaint is absent from the docket, it is evident from the
2 notice of removal that Sanchez's complaint asserts a claim based on state law only—that is,
3 unlawful detainer.¹³ This is insufficient.

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5 **SO ORDERED.**

6 Dated: April 6, 2015

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8 PAUL S. GREWAL
9 United States Magistrate Judge

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25 ¹² See *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826 (2002); *ARCO Env'tl. Remediation, L.L.C. v. Department of Health & Env'l. Quality of St. of Mont.*, 213 F.3d 141108, 1113 (9th Cir.2000).

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27 ¹³ See Docket No. 1.